Supreme Court, U.S.
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Docket No.

In The

Supreme Court of the United States

October Term, 1995

A. Dwight Pettit

Petitioner,

vs.

State of Maryland,

Respondent.

Petition for Writ of Certiorari to the Maryland Court of Appeals

Brief for Petitioner

A. Dwight Pettit, Esquire
U.S. Supreme Court Bar No.
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26pp

QUESTIONS PRESENTED

1. WHETHER THE COURT OF APPEALS ERRED IN REFUSING TO CONSIDER MARYLAND CODE, BUSINESS OCCUPATIONS AND PROFESSIONS, §10-501 AS SUPPORT FOR PETITIONER'S CLAIM FOR ATTORNEY'S FEES WHEN SAID STATUTE WAS PLACED IN THE RECORD AND CONSIDERATION WAS PERMITTED PURSUANT TO MARYLAND RULE 8-131?

2. WHETHER AN ATTORNEY AT LAW AND A CLIENT CAN CONTRACT TO CREATE AN ATTORNEY'S CHARGING LIEN?

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Unofficial Report of the Court of Special Appeals included in Appendix.

JURISDICTION STATEMENT

Pursuant to Rule 10 of the United State Supreme Court Rules, the Court is vested with the discretion to consider the within Petition for Writ of Certiorari.

STATUTES

Maryland Code, Business Occupations & Professions, §10-501 (1984).

Maryland Rule 8-131.

STATEMENT OF THE CASE

A. Procedural History

This Petition for Writ of Certiorari arises out of the Circuit Court for Cecil County's denial of attorney's fees from a judgment entered in its court. On October 3, 1991, the State of Maryland filed a forfeiture proceeding in the Circuit Court in the amount of $71, 732.00 against Tony Murphy (hereinafter referred to as "Client Murphy"). The Petitioner, A. Dwight Pettit was retained by Client Murphy to represent him in the forfeiture proceeding. Included in the retainer agreement contract was a clause giving Attorney Pettit a charging lien on any judgment received as a result of the proceeding for One-Third of the amount of the judgment. The Circuit Court denied the State's forfeiture claim and awarded a judgment in favor of Tony Murphy for the entire amount. The State of Maryland immediately filed an appeal of the Circuit Court's judgment. Subsequently, approximately two (2) weeks later, Client Murphy was charged with federal criminal offenses. Pursuant to a plea bargain agreement regarding the federal charges, Client Murphy withdrew his claim to any interest in the judgment and any claim to the proceeds.

B. Statement of Facts

On or about February 24, 1994, the Petitioner filed a Petition for Order to Pay Counsel Fees in the Circuit Court for Cecil County. The Circuit Court denied the Petition on or about August 11, 1994. The Petitioner appealed the decision to the Court of Special Appeals. The Appellate Court affirmed the trial court's denial of the Petition on or about May 2, 1995. The Petitioner then filed a Petition for Writ of Certiorari to the Maryland Court of Appeals, the court of last resort in the State of Maryland. The Petition was denied on January 18, 1996. The within Petition for Writ of Certiorari follows.

ARGUMENT

I.

THE COURT OF SPECIAL APPEALS ERRED IN REFUSING TO CONSIDER MARYLAND CODE, BUSINESS OCCUPATIONS & PROFESSIONS, §10-501 AS SUPPORT FOR PETITIONER'S CLAIM FOR ATTORNEY'S FEE

The Court of Special Appeals refused to consider Petitioner's

argument that Maryland Code, Business Occupations & Professions, §10-501 created a statutory attorney's charging lien on the judgment entered in the Circuit Court for Cecil County. The reasons articulated by the lower court for its refusal to consider the statute was the "issue" was not brought before the trial court or included in the brief to the appellate court. (See Appendix, Opinion of the Court of Special Appeals, p. 7a). However, the statute was included in the record of the appellate court by virtue of its inclusion in the Respondent's brief to the court of Special Appeals. In addition, the Petitioner has consistently contended that the contingency agreement contract with Tony Murphy created the attorney's charging lien pursuant to principles of contract law, and the inclusion in the contract that a charging lien would be created if any statute permitted one. At the time of the contingency agreement contract, an attorney's charging lien existed as a matter of law pursuant to Maryland code, Business Occupations & Professions, §10-501. Therefore, the issue was brought before the court by both the Petitioner and the Respondent in the lower courts and the appellate court in its refusal to consider the statute.

Maryland Rule 8-131 (a) provides that, "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court ..." In the instant case, the record plainly demonstrates that the issue was raised below by the Petitioner's reliance through the contingency agreement contract that he retained a charging lien by statute. Moreover, it is clear that the trial court considered the issue in its opinion which held that no authority exists which creates an attorney's lien on a judgment without actual possession of the proceeds. (See Trial Court opinion, Appendix, p. 6a). Therefore, the Court of Special Appeals erred in its failure to consider the statute in the appeal.

Notwithstanding that the issue of a statutorily created attorney's lien was asserted in the trial court, the court of Special Appeals further erred in its failure to consider Maryland Code, Business Occupations & Professions, §10-501 because Maryland Rule 8-131 (a) permits consideration of issues not presented at the trial court "if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." It is clear in this case that Maryland Code, Business Occupations & Professions, §10-501 should have been considered by the appellate court pursuant to the Maryland Rule 8-131 (a) exceptions. The Court's failure to do so will likely result in subsequent proceed-

ings and duplicate appeals involving the same issue.

Maryland Code, Business Occupations & Professions, §10-501 provides that:

(a) In general-Subject to subsection (b) of this section, an attorney has a lien on:

(1) an action or proceeding of a client of the attorney at law from the time the action or proceeding begins; and

(2) a judgment or award that a client receives as a result of legal services that the attorney at law performs.

(b) Limited to Fee Agreement--A lien under this section attaches only if, and to the extent that, under a specific agreement between an attorney at law and a client, the client owes the attorney at law a fee other compensation for legal services that produces the judgment or award.

(c) Subordinations of Lien--A lien under this section is subordinate only to:

(1) a prior lien for wages due to an employee of the client for work related to the judgment or award; or

(2) a lien for taxes that the client owes the State.

(d) Execution--An attorney at law may retain property subject to a lien under this section and bring an action for execution under the lien only in accordance with rules that the Court of Appeals adopts.

The statute creates an attorney's charging lien on a judgment received by a client. In the instant case, the statute provided the Petitioner with a charging lien on the judgment entered by the Circuit Court for Cecil County. In addition, the statute specifically states in section (a) (1) that the lien is created from the time the action or proceedings begins. Therefore, the vesting of the

Petitioner's lien is not contingent upon actual possession of the proceeds of the judgment. It is also clear that the lien is not contingent upon the attorney's efforts to execute on the lien. Section (d) of the statue does not permit execution until after the lien is created.

II.
THE CONTINGENCY AGREEMENT CONTRACT BETWEEN THE PETITIONER AND HIS CLIENT CREATED AN ATTORNEY'S CHARGING LIEN, NOT DEPENDENT UPON THE EXISTENCE OF A STATUTE CREATING A CHARGING LIEN

While Maryland Code, Business Occupations & Professions, §10-501 provides an attorney with a charging lien as a matter of law, the contingency agreement contract between the Petitioner and client Tony Murphy established an attorney's charging lien under the principles of contract law. Parties are permitted to create the terms of their contracts. In the instant case, the parties established as one of their contract terms that the Petitioner would have a charging lien of One-Third (1/3) of any judgment obtained from a court. The contract created charging lien was not contingent upon the client's actual possession of the proceeds of the judgment. Therefore, the appellate court erred in determining that an attorney's charging lien was not created pursuant to the contract between the parties.

CONCLUSION

WHEREFORE, for the above-stated reasons, the Petitioner respectfully request that this Court grant the within Petition for Writ of Certiorari.

Respectfully submitted,

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Petitioner

APPENDIX A — OPINION OF THE CIRCUIT COURT FOR CECIL COUNTY

CIRCUIT COURT FOR CECIL COUNTY

$71,732.00	*	IN THE
(T.M. MURPHY, CLAIMANT)	*	CIRCUIT COURT
VS.	*	FOR
STATE OF MARYLAND	*	CECIL COUNTY
APPELLEE	*	Case No. 91476L

Before:

THE HONORABLE DONALDSON C. COLE, JR.

AUGUST 11, 1994

Appearances:

A. DWIGHT PETTIT, ESQUIRE

On behalf of the Claimant

LEO W. OTTEY, JR., ESQUIRE

On behalf of the APPELLEE

PROCEEDINGS

THE COURT: Next one we've got is an Order to Pay Counsel Fees Petition. This is the Attorney General's Office.

MR. OTTEY: Good morning to you. Leo Ottey, Jr. O-T-T-E-Y, Assistant Attorney General for the State of Maryland.

MR. PETTIT: A. Dwight Pettit, Petitioner.

THE COURT: Let's hear your argument, if I can find it. I can't even find the page here.

MR. PETTIT: From Petitioner.

THE COURT: You want attorney fees in a criminal case?

MR. PETTIT: No, it wasn't a criminal case. It was a civil case, forfeiture case, which this Court heard back in September.

THE COURT: What authority do you have for attorney's fees?

MR. PETTIT: Well, authority I cited in the memorandum, judge. When this Court made its award of the proceeds back to the person that the proceeds were taken from, the Attorney General filed an appeal in this case. Then the attorney turned around, and unilaterally dismissed its appeal based on the proposition that it had entered separate agreement with the person that the moneys were seized from.

Then Defendant was arrested by federal authorities on other charges. They then attempted to argue that by his going into agreement with the government and the State that he waived counsel's right to fees. I cited -- the main case that was cited in my motion to you was Skeens vs. Miller, 331 Md. 331. 1993 case, which is a tort case: which indicates when attorney's fees vest in a civil action. I think that even though this authority is analogous to the issue the reason for that -- the only thing that seems to be distinguished in this case is whether or not the fee is quantum meruit, for there it's pursuant to a fee contract. I filed a fee -- I have a fee contract with the person that the money was seized from: whereby, in that fee contract, he agrees to pay me

one third of the amount recovered, minus whatever was advanced, plus expenses.

The reading of this case, which I think is quite clear, judge, indicates that really I'm entitled to quantum maruit, which would even be more than one third of 71,000 that this Court awarded back to the person that the money was taken from. It is unbelievable to me, judge, this Court can render a decision, award the money to the Claimant, of which I have an interest as an attorney's fee, and the Attorney General can then file an appeal and unilaterally dismiss his appeal, then say this Court's judgment is vacated because it entered into some type collateral agreement. The judgment is vacated. The judgment was for the Defendant. That's not vacated.

THE COURT: The Claimant. The verdict was for the Claimant. That stays: which makes it the Claimant's entitled to the return of the money once it's dismissed, at the very least.

MR. PETTIT: Right. Then the question becomes whether he in a separate unilateral agreement with the State or government can, in fact, waive my rights to a fee.

THE COURT: I understand that your client at the time in a later proceeding agreed to turn the money over to the State, is that correct, without your permission?

MR. PETTIT: Terminated my proceedings in Federal Court and agreed as part of a plea bargain the Fed's he'd relinquish interest to the State.

THE COURT: It's your client who turned the money over, not the State, pursuant to a plea bargain in another jurisdiction, federal jurisdiction, and he -- all right. What do you say about that?

MR. PETTIT: My position is, judge, that according to this case -- that case I just quoted to you -- that he does not have the right to turn my interest in the money over to the State or the Fed's. My interest vested upon the contingency taking place. The contingency was my winning of the case before this Court. At the moment this Court ruled in his favor, then my attorney's fees vested. He had no right to relinquish that, either contractual-

ly or quantum meruit.

THE COURT: Okay. All right. What do you say about this?

MR. OTTEY: May it please the Court, judge, how are you, Your Honor? The proposition put forward by Mr. Pettit is a very novel one. There is no case that supports his argument at all. He stands here today not as counsel for Tony Murphy, but as a petitioner in his own right: and there is no case at all that indicates that he's entitled a fee petition -- he's entitled a fee award. Excuse me.

Skeens versus Miller is thoroughly inapposite. Skeens versus Miller stands for the not surprising proposition -- although it did resolve an issue in Maryland -- stands only for the proposition that an attorney's fee -- attorney's interest in a fee in a contingency matter vests earlier on than we thought it did under prior case law. However, the fee interest of the attorney vests against the client. That's what Skeens says.

There is nothing in Skeens at all that supports the remarkable proposition that the interest of the attorney in the fee vests against some third party. The State of Maryland is the third party, Counsel has a remedy. He doesn't want to use his remedy. It is against -- his client is a convicted narcotics trafficker. He doesn't want to use it. He wants the money from the State. The State entered into this: no contract with Mr. Pettit: and the State owes Mr. Pettit nothing.

There is no case cited in any of his memorandum that supports the proposition that an attorney may get attorney's fees from a third party.

Now I think it's important to briefly go over the factual background.

THE COURT: No, no. I don't have time for that.

MR. OTTEY: Talking about factual matters after we left this Court.

THE COURT: Well, if you can be very brief.

MR. OTTEY: I will be.

THE COURT: You can perceive my problem. I'm handling two dockets.

MR. OTTEY: I can see.
THE COURT: All right.

MR. OTTEY: I will be very brief, as brief --

THE COURT: Judge Rollins was supposed to handle the juvenile docket. He's got a case carrying over. I've got my docket and his docket. That's for the morning. Whether I continue in the afternoon is another question.

MR. OTTEY: Your Honor, after this litigation was concluded here, in which the Court concludes there was an improper seizure --

THE COURT: That was one of the many rulings.

MR. OTTEY: One of many rulings. (continuing) -- Mr. Murphy was caught about three weeks later trying to buy --

THE COURT: I don't need. I will let him go ahead.

MR. OTTEY: I think it's very important. He was caught with $425,000 in cash trying to buy fifty keys of cocaine from an undercover FBI agent. He was arrested and charged with various narcotics charges federally in Federal court, with counsel other than Mr. Pettit. Mr. Murphy agreed to forfeit to the State of Maryland the $71,000 in this case.

THE COURT: Which has prior counsel is not contesting that he agreed to forfeit it.

MR. PETTIT: Exactly. The issue becomes whether he can terminated --

MR. OTTEY: It is my time. With other counsel representing him, he entered into a plea agreement, and agreed to forfeit that money to the State of Maryland. Now during that time, of course, the State of Maryland had an ongoing appeal, fully live

appeal, which it has the absolute right to do once that -- once litigation was resolved by virtue of Mr. Murphy's plea agreement in Federal court, the matter was moot. So, of course, we dismissed the appeal.

Now counsel complains he's out about twenty grand. Frankly, who wouldn't. But his remedy is not against the State of Maryland. There is no case that supports that his remedy is alive and well in either contract or quantum meruit, exists against Tony Murphy.

THE COURT: In State of Maryland versus Tony Murphy, this was a full-scale hearing: and the Court found there was insufficient evidence to forfeit the money, among other rulings. At this point the State took an appeal. The State had at this -- when the State took the appeal, it had the $71,732. This was seized on I-95 without an arrest: and the State had possession of the money.

What happened subsequent to this is agreed to - is that the Defendant got caught in another matter. As a result of plea bargaining in the Federal Court, he agreed to turn the -- he agreed that the State could keep the $71,000. At that time he was represented by separate counsel and not the counsel before the bar, who is his counsel in this case, counsel in this case.

Mr. Pettit filed a petition for $20,000 in attorney's fees, notwithstanding, in fact, his own client had turned the money voluntarily over to the State of Maryland pursuant to a plea agreement. Mr. Pettit had never had possession of the money. Mr. Pettit had a contract with his client for one-third contingency fee, which would make his fee roughly around $20,000, give or take a nickel.

The Court knows of no authority where an attorney's client turns over money that was never in the possession of his attorney to a third party voluntarily, could claim attorney's fees in a case such as this, where the Defendant voluntarily gave the money -- represented by another counsel in another matter -- gave the money in this case over to the State, really. I don't see where a lien would vest under the circumstances of this case, so the Petition for Attorney's Fees is denied.

(Whereupon, the Hearing adjourned.)

APPENDIX B — UNREPORTED OPINION OF THE MARYLAND COURT OF SPECIAL APPEALS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1600

September Term, 1994

In RE: $71,732.00

Bishop,
Fischer,
Harrell,

JJ.

Per Curiam

Filed: August 8, 1995

This appeal arises out of the denial by the Circuit Court for Cecil County of a Petition for Order to Pay Counsel Fees filed by appellant, A. Dwight Pettit, Esq., following his representation of a client in a drug-related forfeiture proceeding.

ISSUE

Appellant presents a single question in urging reversal of the circuit court, which we have rephrased as follows:

> I. Where appellant had entered into a contingency fee agreement with his client and judgment was entered in favor of his client in a forfeiture action instituted by the State, did the circuit court err in declining to grant appellant's petition for an order to pay counsel fees and litigation costs out of funds that had been the subject of the forfeiture proceeding, although the judgment was never executed and the client subsequently relinquished all interest in the funds in conjunction with a federal plea agreement?

BACKGROUND

On 3 October 1991, the Maryland State Police stopped a speeding motor vehicle driven by Larry Jerome Hawkins that was travelling northbound on Interstate 95 in Cecil County. The State Trooper on the scene approached the vehicle and requested from the driver his license and registration in order to issue a citation. The trooper became suspicious of illegal activity after observing the unusually nervous mannerisms of the driver. Hawkins was unable to produce the registration, and, when questioned, could not identify the owner of the vehicle. Tony M. Murphy, who was sitting in the right rear passenger compartment, interrupted the conversation between the trooper and Hawkins upon hearing that the driver could not relate the name of the owner. Murphy volunteered the owner's identity, and insisted that Hawkins had permission to transport the vehicle to New York. The trooper's unsatisfied suspicions ultimately led him to conduct a nonconsensual search of the vehicle. The search revealed a box

containing $71,732.00 in cash on the right rear floor panel. Upon detecting the odor of marijuana on the money and after the vehicle's occupants related conflicting stories about their destination, the trooper confiscated the currency.

That same day, Murphy retained A. Dwight Pettit, Esq., appellant, as counsel to represent him in his bid to reclaim the seized funds. Murphy entered into a written contingency fee contract with Pettit under which Murphy, in exchange for appellant's services, agreed to pay all necessary costs and expenses associated with the conduct of proceedings. He advanced a retainer of $5000.00 that was to be credited against any contingent fee earned in the matter. The fee agreement set forth the following provision respecting an attorney's lien:

> Attorney is hereby given a lien on this claim or cause of action, or any sum recovered by way of settlement, and on any judgment that may be recovered thereon for the sum and share previously stated, as his fee; and it is further agreed that attorney shall have all general possessory or retaining liens and all special or charging liens known to both the common and statutory law of Maryland as exists now or as may hereafter be developed or enacted.

On 31 December 1991, the State of Maryland instituted forfeiture proceedings against the seized funds in the Circuit Court for Cecil County pursuant to Md. Ann. Code of 1957, art. 27 §297. The State alleged in its complaint that the $71,732.00 confiscated from Murphy was used or was intended for use in connection with the possession, distribution, or manufacturing of a controlled dangerous substance and requested that an order be entered forfeiting the fruits of the seizure to the State. Following a bench trial in which appellant represented Murphy, the circuit court denied the State's forfeiture claim and entered judgment in favor of Murphy on 21 September 1993. The State, continuing in possession of the confiscated funds, filed a timely appeal of the court's decision on 4 October 1993.

While the State's appeal was pending, Murphy was arrested by federal authorities on various narcotics charges. Represented by different counsel in the federal criminal proceedings, Murphy

executed a written plea agreement with the U.S. Attorney's Office for Maryland and a companion Agreement and Release of Liability with the Office of the Attorney General of Maryland on 2 February 1994. Under the terms of the latter agreement, Murphy withdrew his claim to the forfeited funds in the State matter, asserted that neither he nor any other third party had any claim, right, or interest in the $71,732.00, and agreed that the currency would be forfeited to the State. As a result of that agreement, the State, on 4 February 1994, dismissed its appeal of the circuit court's 21 September 1993 judgment.

Following the dismissal of the State's appeal of the judgment in favor of Murphy, appellant advised the Maryland Attorney General's Office by letter dated 22 February 1994 that he was demanding one-third of the $71,732.00 plus expenses, less the retainer advanced. Although he asserted in this letter that the basis for his claim was a contract with Murphy or, alternatively, in *quantum meruit*, no mention of a lien being asserted against the funds appeared. The State refused to recognize appellant's interest in the funds, and therefore declined to remit any portion thereof to him. On 24 February 1994, appellant filed in the circuit court a Petition for Order to Pay Counsel Fees out of the money that had been the subject of the forfeiture action. The Petition based appellant's claim at the conclusion of an 11 August 1994 hearing. The judge explained that he was unaware of any authority pursuant to which an attorney whose client relinquishes an interest in funds that were never in the possession of the attorney could successfully assert a claim for attorney's fees against those funds. Appellant noted an appeal of that decision to this Court.

DISCUSSION

The sole issue we must address in this appeal concerns whether, in Maryland, an attorney who has entered into a written contingency fee agreement wiht a client has a contractual right to a counsel fee out of an unexpected favorable judgment in a drug-related cash forfeiture case, where the client, post-judgment, has surrendered his claim to the judgment. Appellant asserts that, by virtue of the contingency fee agreement with Murphy, he obtained a cognizable legal interest in the seized currency at the time he undertook representation of Murphy. Pettit contends that,

once judgment was entered in favor of Murphy in the forfeiture proceeding, his interest in that judgment vested and he became entitled to attorney's fees and costs out of the funds that had been the subject of the forfeiture. Conversely, the State insists that the circuit court properly rejected appellant's claim because Pettit did not allege that he had an attorney's lien on the $71,732.00 pursuant to Maryland common and statutory law. The State moreover asserts there is no authority in Maryland that establishes a lien for an attorney's fee and costs on a money judgment where the money has never come into the possession of the attorney and where the client has voluntarily relinquished all interest in the judgment. Although the State acknowledges Maryland's recognition of a common law retaining lien in favor of an attorney as well the existence of an attorney's lien statute in Md. Code Ann., Bus. Occ. & Prof. §10-501, it maintains that no cognizable lien on Murphy's judgment arose in favor of appellant. [1]

The other type of lien is a charging lien, which "[binds] a judgment recovered through the attorney's efforts for the value of the services rendered in the action." *Quinn, supra, id.* The charging lien does not depend upon possession, but gives the attorney the right "to have expenses and compensation due for services in a suit secured to the attorney in a judgment, decree or re-

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1. At common law, the retaining lien and the charging lien were the two types of liens available to an attorney to secure a counsel fee for services rendered. As the Court of Appeals explained in Ashman vs. Schecter, 196 Md. 168, 173 (1950), the retaining lien is a general lien that an attorney possesses "on all papers, securities and money belonging to his client which come into [the attorney's] possession in the course of his employment." It is considered a passive lien that is dependent upon possession and cannot, as a general rule, be actively enforced either in law or equity. *id.* at 172-73; see also *St. Joseph Hospital vs. Quinn*, 241 Md. 371, 378 (1966). The retaining lien gives an attorney the right to retain property of the client that has been received by the attorney until all the charges against the client are paid. Ashman, supra, 196 Md. at 173; *see also Diamond vs. Diamond*, 298 Md. 24, 36 (1983); *Campen vs. Talbot Bank of Easton*, 271 Md. 610, 614 (1974). When money is in issue, a retaining lien attaches to funds actually collected belonging to the client. *Diamond, supra, id.*

ward for a client." *Black's Law Dictionary*, 233 (6th ed. 1990). It is a "means invented by the courts by preventing the clients from receiving the fruits of recoveries without paying for the valuable services by which the recoveries were obtained." *Ashman, supra*, 196 Md. at 174. In effect, a charging lien ensures that an attorney is paid fees and expenses out of any judgment obtained as a result of the lawyer's labor and skill.

In *Ashman*, the Court of Appeals recognized the retaining lien as part of Maryland law, but viewed the charging lien as "an unwarranted and dangerous extension of the attorney's lien." id. at 176. The decisions that have followed *Ashman* clarify that Maryland does not recognize the charging lien in the absence of statute. *Diamond, supra*, 298 Md. at 35; see also *Northwestern Nat'l Ins. Co. vs. Wetherall*, 272 Md. 642 (1974); *Campen vs. Talbot Bank of Easton, supra*, 271 Md. 610; *Tucker vs. Dudley*, 223 Md. 467 (1960).

In 1985, the General Assembly enacted ch. 723, Acts of 1985, the current iteration of which is found in Md. Code Ann., Bus. Occ. & Prof. § 10-501, which provides for an attorney's lien as follows:

(a) In general - Subject to subsection (b) of this section, an attorney at law has a lien on:

(1) an action or proceeding of a client of the attorney at law from the time the action or proceeding begins; and

(2) a judgment or award that a client receives as a result of legal services that the attorney at law performs.

(b) Limited to fee agreement - A lien under this section attaches only if, and to the extent that, under a specific agreement between an attorney at law and a client, the client owes the attorney at law a fee or other compensation for legal services that produced the judgment or award

(c) Subordination of lien - A lien under this section is subordinate only to:

(1) a prior lien for wages due to an employee of the client for work related to the judgment or award; or

(2) a lien for taxes that the client owes the State.

(d) Execution. - An attorney at law may retain property subject to a lien under this section and bring an action for execution under the lien only in accordance with rules that the Court of Appeals adopts.

As a threshold argument, the State claims that, because the

case *sub judice* arises out of a forfeiture proceeding pursuant to Md. Ann. Code, Art. 27 § 297, appellant must fall into the category of a person protected by the statute in order to have standing to assert a claim against the $71,732.00. We are urged to dismiss this appeal on the ground that appellant is not a member of the class protected by the statute, and that he therefore lacks standing to bring his claim for attorney's fees and costs. In support of this assertion, the State relies upon § 297 (h) (4) (i), which provides for protection under the statute only for owners and lienholders of confiscated property. By reasoning that Pettit neither possesses an ownership interest in the confiscated funds nor satisfies the definition of a lienholder under § 297 (a) (8) as a person with a lien or secured interest on the property created before the seizure, the State concludes that the absence of appellant's status as a valid lienholder or owner of the funds permits the State to take title to the property free of appellant's, at best, after-acquired interest.

This argument ignores the fact that, although appellant does not satisfy the definition of an owner or lienholder such that he is entitled to the procedural protections of the forfeiture statute, the State's ability to extinguish or subordinate other interests in the property is dependent upon its own success in the forfeiture proceeding. In the case *sub judice*, the State's right to claim the funds free of all liens acquired or perfected after the seizure of the property terminated once judgment was entered in favor of Murphy and the appeal of that judgment was dismissed. Thus, appellant's inability to benefit from the safeguards of § 297 in no way precludes him from advancing an alternative basis upon which to assert a claim for attorney's fees and costs out of the fruits of the forfeiture. We therefore reject the State's contention that standing under § 297 is an absolute prerequisite to appellant's ability to maintain his claim against the confiscated funds. Accordingly, we shall consider the merits of Pettit's argument.

Appellant, both in the trial court and in his brief to us, premised his right to attorney's fees out of the seized funds upon two theories. He argued that 1) he obtained an interest in the $71,732.00 as a result of the contingency fee agreement with his client, and 2) in the alternative, he has a claim in *quantum meruit* for services rendered. By its terms, *quantum meruit* is a method of obtaining a reasonable value for services absent a clear and un

derstood contract, or for partial performance when an entire contract has been rescinded. *Attorney Grievance Comm'n vs. McIntire*, 286 Md. 87, 93 (1979). Once a contract for services is formed, its terms are to be followed. *See Laurel Race Course vs. Regal Construction Co.*, 274 Md. 142 (1975); see also *Norris vs. Ald New York, Inc.*, 227 Md. 110 (1962). Under its clear provisions, the agreement between appellant and Murphy provided that Pettit would receive thirty-three percent of the $71,732.00 upon recovery. As the contract was completed by the occurrence of the contingency, appellant's right to a counsel fee, if it exists, would be predicated upon the terms of his contract with his client rather than in *quantum meruit*. *See Attorney Grievance Comm'n, supra*, 286 Md. at 95-96; cf. *Skeens vs. Miller*, 331 Md. 331 (1993) (attorney retained on a contingent fee agreement is entitled to claim in *quantum meruit* where the agreement is silent as to any compensation due upon discharge and where the attorney was discharged prior to the occurrence of the contingency). We therefore move on to consider whether appellant's argument concerning the fee agreement with his client can furnish appellant the relief he requests.

As appellant acknowledges, Murphy relinquished any interest that he (Murphy) maintained in the seized funds by entering into the Agreement of Release of Liability concurrently with the federal plea agreement.[2] Pettit contends, however, that the release by Murphy of *his own* interest in the funds in no way extinguished appellant's rights therein. According to appellant, his right to a share of the funds was unimpaired by the terms of Murphy's agreement with the State by virtue of the prior fulfillment of the contingency in the written fee arrangement with his former client. Pettit asserts that he acquired from this contract a legal interest in the seized currency from the data of his contract with Murphy, which vested on the date of judgment was entered against the State in the forfeiture proceeding.

As the State indicates, Pettit did not specifically assert below

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[2]Pettit maintains that both Murphy and the State had knowledge of Pettit's interest in the confiscated funds at the time Murphy agreed to release his interest in the $71,732.00. We are unable to uncover anything in the record that clearly supports this claim. The record re-

or in his brief to this Court that he had a common law or statutory lien on the $71,732.00 as a result of the fee agreement with Murphy. Instead, appellant focused his argument solely upon a theory that he attained an interest in Murphy's judgment by virtue of the occurrence of the contingency under the fee agreement, which could not be thereafter terminated by either Murphy or the State.

Pettit directs us to no persuasive authority that supports his theory of recovery. As grounds for his assertion that he retains a valid legal interest in the $71,732.00, appellant cites *Skeens vs. Miller, supra*, 331 Md. at 331, for the proposition that a client is bound by a contingency fee agreement if the contingency occurs prior to discharge. In *Skeens*, the Court of Appeals concluded that where an attorney has a contingency fee agreement with his client and has been discharged without cause prior to the occurrence of the contingency, the attorney has a claim against the client in *quantum meruit* that accrues immediately upon discharge. As *Skeens* concerned only an attorney's right to assert an action *against the client* following discharge for the reasonable value of services performed, it provides no support for appellant's claim against this appellee.

Appellant also directs our attention to certain federal decisions which suggest that property forfeitable under the Federal Comprehensive Forfeiture Act may be exempt from forfeiture proceedings if that property has been contracted for or paid as attorney's fees. Although appellant attempts to analogize these cases to the one *sub judice*, Murphy's release of his interest in the funds occurred not pursuant to a forfeiture proceeding, but, rather, was the result of Murphy's voluntary agreement with federal and State authorities. Therefore, these decisions are inapposite. Accordingly, in the absence of authority to support appellant's theory that he is entitled to recover from the State a portion of the $71,732.00 as a result of his contingency fee contract with his

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veals only that, prior to filing his Petition for Order to Pay Counsel Fees, appellant notified the Maryland Attorney General's Office by the 22 February 1994 letter, *supra*, of the existence of his contingency fee agreement with Murphy and that it, and *quantum meruit*, were the basis for his claim against the funds.

former client, we perceive no error in the circuit court's denial of his Petition for Order to Pay Counsel Fees on the grounds properly before us.

At oral argument before us and for the first time in the record of this case, appellant, apparently enlightened by the State's brief, offered Md. Code Ann., Bus. Occ. & Prof. § 10-501 as an alternative theory of recovery. As discussed in note 1, *supra*, § 10-501 provides for a statutory attorney's lien on an action or proceeding of a client of the attorney at law from the time the action or proceeding begins. Although appellant attempted to persuade us at oral argument to consider § 10-501 as support for his claim of error by the trial court, an appellate court ordinarily will not decide any point or question of law which was not raised in and decided by the court below. Md. Rule 8-131 (a); *County Council vs. Offen*, 334 Md. 499, 508 (1994). Pettit did not assert the protections of an attorney's lien either in his Petition for Order to Pay Counsel Fees or at the 11 August 1994 hearing in the trial court. The question of whether appellant possessed a statutory charging lien on Murphy's judgment, and therefore the seized funds, was neither mentioned before nor decided by the circuit court. As the issue has not been preserved for our review, we decline to consider whether appellant could have benefitted from the assertion of a lien under § 10-501.[3]

Judgment affirmed; costs to be paid by appellant.

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[3]Even though not properly presented in this case, there appears to us a myriad of serious threshold questions pertaining to the assertion of a lien under § 10-501 that would need to be addressed, none of which was raised by the parties. In light of the Assembly intended the statute to be self-executing, or, rather, to be effective only at such time as the Court of Appeals promulgated a rule to implement its provisions. In that regard, it is debatable whether, in the absence of such a rule, the lien could still attach at the time an action or proceeding is commenced and be executed upon at such time as the Court of Appeals adopts a rule concerning execution. Moreover, there

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is a significant question as to what type of notice, if any, would be a prerequisite to the attachment or execution of the lien. *See, e.g., Barry Properties vs. Fick Bros. Roofing Co.*, 277 Md. 15 (1976) (holding unconstitutional Maryland's former mechanic's lien law as incompatible with the due process clauses of the Fourteenth Amendment of the United States Constitution and Article 23 of the Maryland Declaration of Rights). The fact that the parties have not briefed and argued these important issues provides additional justification for our decision not to address § 10-501 as it might bear on the case *sub judice*.

We note, however, that the Standing Committee on the Rules of Practice and Procedure, in its 130th Report, has recommended the adoption by the Court of Appeals of Maryland of proposed Rule 2-652 pertaining to the enforcement of both the common law retaining lien as well as the attorney's liens set forth in § 10-501. That proposed rule permits an attorney who has a lien under § 10-501 to assert the lien by serving a written notice upon the client and upon any person against whom the lien is to be enforced in order to inform the client or other person to hold for the attorney's benefit any money payable or property passing to the client relating to the action. Proposed Rule 2-652 also provides for a circuit court to adjudicate the rights of the parties in relation to the lien and to resolve any disputes regarding the attorney's entitlement to a lien. The Court of Appeals has not yet acted on this contemplated rule.

As we noted, *supra*, the record of this case does not disclose whether the State was on notice of Pettit's claim against the seized funds before it decided to dismiss its appeal of the Circuit court's judgment.

APPENDIX C — ORDER OF THE MARYLAND COURT OF APPEALS

IN RE: $71,732.00 A. DWIGHT PETTIT	*	In the
	*	Court of Appeals
vs.	*	of Maryland
	*	Petition Docket No. 462
STATE OF MARYLAND	*	September Term, 1995 (No. 1600, September Term 1994, Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY
Chief Judge

Date: January 18, 1996